

AMENDED IN SENATE MARCH 27, 2000

SENATE BILL

No. 1955

**Introduced by Committee on Public Safety (Senators
Vasconcellos (Chair), Burton, Johnston, McPherson,
Polanco, and Rainey)**

February 24, 2000

An act to amend Sections 1170.17 and 1538.5 of the Penal Code, and to amend ~~Sections 21806 and~~ Section 23612 of the Vehicle Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1955, as amended, Committee on Public Safety. Public safety.

(1) Existing law authorizes the prosecution and punishment of a person under the age of 18 years as an adult for a criminal offense under specified circumstances upon a finding that the person is not a fit and proper subject to be dealt with under the juvenile court law. Existing statutory language provides that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the person is a fit and proper subject to be dealt with under the juvenile court law based upon 5 specified circumstances.

This bill would amend that provision to correct that statutory language by providing that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence,

that the person is not a fit and proper subject to be dealt with under the juvenile court law as specified.

(2) Existing law provides a pretrial procedure for suppressing evidence on the grounds that it was obtained as a result of an illegal search or seizure.

This bill would provide that neither the investigating officer nor the investigator of the defendant shall be excluded from the hearing on the motion to suppress evidence.

(3) Existing law specifies that a person who drives a motor vehicle is deemed to have given his or her consent to a chemical test of his or her blood or breath for the purpose of determining the alcoholic content of the blood if lawfully arrested for violating a specified provision of law.

This bill would correct a cross-reference in this provision.

~~(4) Existing law requires motorists to take specified action including yield the right-of-way to an authorized emergency vehicle that is sounding a siren and has at least one visible red light as specified.~~

~~This bill would require that the above provision apply also when the emergency vehicle is sounding a siren and has at least one visible blue light as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170.17 of the Penal Code is
2 amended to read:
3 1170.17. (a) When a person is prosecuted for a
4 criminal offense committed while he or she was under the
5 age of 18 years and the prosecution is lawfully initiated in
6 a court of criminal jurisdiction without a prior finding that
7 the person is not a fit and proper subject to be dealt with
8 under the juvenile court law, upon subsequent conviction
9 for any criminal offense, the person shall be subject to the
10 same sentence as an adult convicted of the identical
11 offense, in accordance with the provisions set forth in
12 subdivision (a) of Section 1170.19, except under the
13 circumstances described in subdivision (b) or (c).



(b) Where the conviction is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to a rebuttable presumption that the person is not a fit and proper subject to be dealt with under the juvenile court law, and the prosecution for the offense could not lawfully be initiated in a court of criminal jurisdiction, then either of the following shall apply:

(1) The person shall be subject to the same sentence as an adult convicted of the identical offense in accordance with the provisions set forth in subdivision (a) of Section 1170.19, unless the person prevails upon a motion brought pursuant to paragraph (2).

(2) Upon a motion brought by the person, the court shall order the probation department to prepare a written social study and recommendation concerning the person's fitness to be dealt with under the juvenile court law and the court shall either conduct a fitness hearing or suspend proceedings and remand the matter to the juvenile court to prepare a social study and make a determination of fitness. The person shall receive a disposition under the juvenile court law only if the person demonstrates, by a preponderance of the evidence, that he or she is a fit and proper subject to be dealt with under the juvenile court law, based upon each of the following five criteria:

(A) The degree of criminal sophistication exhibited by the person.

(B) Whether the person can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(C) The person's previous delinquent history.

(D) Success of previous attempts by the juvenile court to rehabilitate the person.

(E) The circumstances and gravity of the offense for which the person has been convicted.

If the court conducting the fitness hearing finds that the person is not a fit and proper subject for juvenile court jurisdiction, then the person shall be sentenced by the court where he or she was convicted, in accordance with

1 the provisions of paragraph (1). If the court conducting
2 the hearing on fitness finds that the person is a fit and
3 proper subject for juvenile court jurisdiction, then the
4 person shall be subject to a disposition in accordance with
5 the provisions of subdivision (b) of Section 1170.19.

6 (c) Where the conviction is for the type of offense
7 which, in combination with the person's age at the time
8 the offense was committed, makes the person eligible for
9 transfer to a court of criminal jurisdiction, pursuant to a
10 rebuttable presumption that the person is a fit and proper
11 subject to be dealt with under the juvenile court law, then
12 the person shall be sentenced as follows:

13 (1) The person shall be subject to a disposition under
14 the juvenile court law, in accordance with the provisions
15 of subdivision (b) of Section 1170.19, unless the district
16 attorney prevails upon a motion, as described in
17 paragraph (2).

18 (2) Upon a motion brought by the district attorney,
19 the court shall order the probation department to
20 prepare a written social study and recommendation
21 concerning whether the person is a fit and proper subject
22 to be dealt with under the juvenile court law. The court
23 shall either conduct a fitness hearing or suspend
24 proceedings and remand the matter to the juvenile court
25 for a determination of fitness. The person shall be subject
26 to a juvenile disposition under the juvenile court law
27 unless the district attorney demonstrates, by a
28 preponderance of the evidence, that the person is not a
29 fit and proper subject to be dealt with under the juvenile
30 court law, based upon the five criteria set forth in
31 paragraph (2) of subdivision (b). If the person is found to
32 be not a fit and proper subject to be dealt with under the
33 juvenile court law, then the person shall be sentenced in
34 the court where he or she was convicted, in accordance
35 with the provisions set forth in subdivision (a) of Section
36 1170.19. If the person is found to be a fit and proper
37 subject to be dealt with under the juvenile court law, the
38 person shall be subject to a disposition, in accordance with
39 the provisions of subdivision (b) of Section 1170.19.



(d) Where the conviction is for the type of offense which, in combination with the person's age, does not make the person eligible for transfer to a court of criminal jurisdiction, the person shall be subject to a disposition in accordance with the provisions of subdivision (b) of Section 1170.19.

SEC. 2. Section 1538.5 of the Penal Code is amended to read:

1538.5. (a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(A) The search or seizure without a warrant was unreasonable.

(B) The search or seizure with a warrant was unreasonable because any of the following apply:

(i) The warrant is insufficient on its face.

(ii) The property or evidence obtained is not that described in the warrant.

(iii) There was not probable cause for the issuance of the warrant.

(iv) The method of execution of the warrant violated federal or state constitutional standards.

(v) There was any other violation of federal or state constitutional standards.

(2) A motion pursuant to paragraph (1) shall be made in writing and accompanied by a memorandum of points and authorities and proof of service. The memorandum shall list the specific items of property or evidence sought to be returned or suppressed and shall set forth the factual basis and the legal authorities that demonstrate why the motion should be granted.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 to 170.6, inclusive, of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal or superior court as provided in this

1 section, the judge or magistrate shall receive evidence on
2 any issue of fact necessary to determine the motion.

3 (d) If a search or seizure motion is granted pursuant
4 to the proceedings authorized by this section, the
5 property or evidence shall not be admissible against the
6 movant at any trial or other hearing unless further
7 proceedings authorized by this section, Section 871.5,
8 1238, or 1466 are utilized by the people.

9 (e) If a search or seizure motion is granted at a trial,
10 the property shall be returned upon order of the court
11 unless it is otherwise subject to lawful detention. If the
12 motion is granted at a special hearing, the property shall
13 be returned upon order of the court only if, after the
14 conclusion of any further proceedings authorized by this
15 section, Section 1238 or 1466, the property is not subject
16 to lawful detention or if the time for initiating the
17 proceedings has expired, whichever occurs last. If the
18 motion is granted at a preliminary hearing, the property
19 shall be returned upon order of court after 10 days unless
20 the property is otherwise subject to lawful detention or
21 unless, within that time, further proceedings authorized
22 by this section, Section 871.5 or 1238 are utilized; if they
23 are utilized, the property shall be returned only if, after
24 the conclusion of the proceedings, the property is no
25 longer subject to lawful detention.

26 (f) (1) If the property or evidence relates to a felony
27 offense initiated by a complaint, the motion shall be made
28 in the superior court only upon filing of an information,
29 except that the defendant may make the motion at the
30 preliminary hearing in the municipal court or in the
31 superior court in a county in which there is no municipal
32 court, but the motion shall be restricted to evidence
33 sought to be introduced by the people at the preliminary
34 hearing.

35 (2) The motion may be made at the preliminary
36 examination only if at least five court days before the date
37 set for the preliminary examination the defendant has
38 filed and personally served on the people a written
39 motion accompanied by a memorandum of points and
40 authorities as required by paragraph (2) of subdivision

(a). At the preliminary examination, the magistrate may grant the defendant a continuance for the purpose of filing the motion and serving the motion upon the people, at least five court days before resumption of the examination, upon a showing that the defendant or his or her attorney of record was not aware of the evidence or was not aware of the grounds for suppression before the preliminary examination.

(3) Any written response by the people to the motion described in paragraph (2) shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to the hearing at which the motion is to be made.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal court or in the superior court in a county in which there is no municipal court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal or superior court.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 court days after notice to the people, unless the people are willing to waive a portion of this time. Any written response by the people to the motion shall be filed with the court and personally served on the defendant or his or her attorney of record at least two court days prior to

1 the hearing, unless the defendant is willing to waive a
2 portion of this time. If the offense was initiated by
3 indictment or if the offense was initiated by complaint
4 and no motion was made at the preliminary hearing, the
5 defendant shall have the right to fully litigate the validity
6 of a search or seizure on the basis of the evidence
7 presented at a special hearing. If the motion was made at
8 the preliminary hearing, unless otherwise agreed to by all
9 parties, evidence presented at the special hearing shall be
10 limited to the transcript of the preliminary hearing and
11 to evidence that could not reasonably have been
12 presented at the preliminary hearing, except that the
13 people may recall witnesses who testified at the
14 preliminary hearing. If the people object to the
15 presentation of evidence at the special hearing on the
16 grounds that the evidence could reasonably have been
17 presented at the preliminary hearing, the defendant shall
18 be entitled to an in camera hearing to determine that
19 issue. The superior court shall base its ruling on all
20 evidence presented at the special hearing and on the
21 transcript of the preliminary hearing, and the findings of
22 the magistrate shall be binding on the superior court as
23 to evidence or property not affected by evidence
24 presented at the special hearing. After the special hearing
25 is held in the superior court, any review thereafter
26 desired by the defendant prior to trial shall be by means
27 of an extraordinary writ of mandate or prohibition filed
28 within 30 days after the denial of his or her motion at the
29 special hearing.

30 (j) If the property or evidence relates to a felony
31 offense initiated by complaint and the defendant's
32 motion for the return of the property or suppression of
33 the evidence at the preliminary hearing is granted, and
34 if the defendant is not held to answer at the preliminary
35 hearing, the people may file a new complaint or seek an
36 indictment after the preliminary hearing, and the ruling
37 at the prior hearing shall not be binding in any
38 subsequent proceeding, except as limited by subdivision
39 (p). In the alternative, the people may move to reinstate
40 the complaint, or those parts of the complaint for which

1 the defendant was not held to answer, pursuant to Section
2 871.5. If the property or evidence relates to a felony
3 offense initiated by complaint and the defendant's
4 motion for the return or suppression of the property or
5 evidence at the preliminary hearing is granted, and if the
6 defendant is held to answer at the preliminary hearing,
7 the ruling at the preliminary hearing shall be binding
8 upon the people unless, upon notice to the defendant and
9 the court in which the preliminary hearing was held and
10 upon the filing of an information, the people, within 15
11 days after the preliminary hearing, request in the
12 superior court a special hearing, in which case the validity
13 of the search or seizure shall be relitigated de novo on the
14 basis of the evidence presented at the special hearing, and
15 the defendant shall be entitled, as a matter of right, to a
16 continuance of the special hearing for a period of time up
17 to 30 days. The people may not request relitigation of the
18 motion at a special hearing if the defendant's motion has
19 been granted twice. If the defendant's motion is granted
20 at a special hearing in the superior court, the people, if
21 they have additional evidence relating to the motion and
22 not presented at the special hearing, shall have the right
23 to show good cause at the trial why the evidence was not
24 presented at the special hearing and why the prior ruling
25 at the special hearing should not be binding, or the people
26 may seek appellate review as provided in subdivision (o),
27 unless the court, prior to the time the review is sought, has
28 dismissed the case pursuant to Section 1385. If the case has
29 been dismissed pursuant to Section 1385, or if the people
30 dismiss the case on their own motion after the special
31 hearing, the people may file a new complaint or seek an
32 indictment after the special hearing, and the ruling at the
33 special hearing shall not be binding in any subsequent
34 proceeding, except as limited by subdivision (p). If the
35 property or evidence seized relates solely to a
36 misdemeanor complaint, and the defendant made a
37 motion for the return of property or the suppression of
38 evidence in the municipal court or superior court in a
39 county in which there is no municipal court prior to trial,
40 both the people and defendant shall have the right to

1 appeal any decision of that court relating to that motion
2 to the superior court of the county in which the municipal
3 or superior court is located, in accordance with the
4 California Rules of Court provisions governing appeals to
5 the appellate division in criminal cases. If the people
6 prosecute review by appeal or writ to decision, or any
7 review thereof, in a felony or misdemeanor case, it shall
8 be binding upon them.

9 (k) If the defendant's motion to return property or
10 suppress evidence is granted and the case is dismissed
11 pursuant to Section 1385, or the people appeal in a
12 misdemeanor case pursuant to subdivision (j), the
13 defendant shall be released pursuant to Section 1318 if he
14 or she is in custody and not returned to custody unless the
15 proceedings are resumed in the trial court and he or she
16 is lawfully ordered by the court to be returned to custody.

17 If the defendant's motion to return property or
18 suppress evidence is granted and the people file a petition
19 for writ of mandate or prohibition pursuant to subdivision
20 (o) or a notice of intention to file such a petition, the
21 defendant shall be released pursuant to Section 1318,
22 unless (1) he or she is charged with a capital offense in a
23 case where the proof is evident and the presumption
24 great, or (2) he or she is charged with a noncapital offense
25 defined in Chapter 1 (commencing with Section 187) of
26 Title 8 of Part 1, and the court orders that the defendant
27 be discharged from actual custody upon bail.

28 (l) If the defendant's motion to return property or
29 suppress evidence is granted, the trial of a criminal case
30 shall be stayed to a specified date pending the
31 termination in the appellate courts of this state of the
32 proceedings provided for in this section, Section 871.5,
33 1238, or 1466 and, except upon stipulation of the parties,
34 pending the time for the initiation of these proceedings.
35 Upon the termination of these proceedings, the
36 defendant shall be brought to trial as provided by Section
37 1382, and, subject to the provisions of Section 1382,
38 whenever the people have sought and been denied
39 appellate review pursuant to subdivision (o), the
40 defendant shall be entitled to have the action dismissed

1 if he or she is not brought to trial within 30 days of the date
2 of the order that is the last denial of the petition. Nothing
3 contained in this subdivision shall prohibit a court, at the
4 same time as it rules upon the search and seizure motion,
5 from dismissing a case pursuant to Section 1385 when the
6 dismissal is upon the court's own motion and is based
7 upon an order at the special hearing granting the
8 defendant's motion to return property or suppress
9 evidence. In a misdemeanor case, the defendant shall be
10 entitled to a continuance of up to 30 days if he or she
11 intends to file a motion to return property or suppress
12 evidence and needs this time to prepare for the special
13 hearing on the motion. In case of an appeal by the
14 defendant in a misdemeanor case from the denial of the
15 motion, he or she shall be entitled to bail as a matter of
16 right, and, in the discretion of the trial or appellate court,
17 may be released on his or her own recognizance pursuant
18 to Section 1318.

19 (m) The proceedings provided for in this section, and
20 Sections 871.5, 995, 1238, and 1466 shall constitute the sole
21 and exclusive remedies prior to conviction to test the
22 unreasonableness of a search or seizure where the person
23 making the motion for the return of property or the
24 suppression of evidence is a defendant in a criminal case
25 and the property or thing has been offered or will be
26 offered as evidence against him or her. A defendant may
27 seek further review of the validity of a search or seizure
28 on appeal from a conviction in a criminal case
29 notwithstanding the fact that the judgment of conviction
30 is predicated upon a plea of guilty. Review on appeal may
31 be obtained by the defendant provided that at some stage
32 of the proceedings prior to conviction he or she has
33 moved for the return of property or the suppression of the
34 evidence.

35 (n) This section establishes only the procedure for
36 suppression of evidence and return of property, and does
37 not establish or alter any substantive ground for
38 suppression of evidence or return of property. Nothing
39 contained in this section shall prohibit a person from
40 making a motion, otherwise permitted by law, to return

1 property, brought on the ground that the property
2 obtained is protected by the free speech and press
3 provisions of the United States and California
4 Constitutions. Nothing in this section shall be construed
5 as altering (1) the law of standing to raise the issue of an
6 unreasonable search or seizure; (2) the law relating to the
7 status of the person conducting the search or seizure; (3)
8 the law relating to the burden of proof regarding the
9 search or seizure; (4) the law relating to the
10 reasonableness of a search or seizure regardless of any
11 warrant that may have been utilized; or (5) the
12 procedure and law relating to a motion made pursuant to
13 Section 871.5 or 995, or the procedures that may be
14 initiated after the granting or denial of such a motion.

15 (o) Within 30 days after a defendant's motion is
16 granted at a special hearing in the superior court in a
17 felony case, the people may file a petition for writ of
18 mandate or prohibition in the court of appeal, seeking
19 appellate review of the ruling regarding the search or
20 seizure motion. If the trial of a criminal case is set for a
21 date that is less than 30 days from the granting of a
22 defendant's motion at a special hearing in the superior
23 court in a felony case, the people, if they have not filed
24 such a petition and wish to preserve their right to file a
25 petition, shall file in the superior court on or before the
26 trial date or within 10 days after the special hearing,
27 whichever occurs last, a notice of intention to file a
28 petition and shall serve a copy of the notice upon the
29 defendant.

30 (p) If a defendant's motion to return property or
31 suppress evidence in a felony matter has been granted
32 twice, the people may not file a new complaint or seek an
33 indictment in order to relitigate the motion or relitigate
34 the matter de novo at a special hearing in the superior
35 court as otherwise provided by subdivision (j), unless the
36 people discover additional evidence relating to the
37 motion that was not reasonably discoverable at the time
38 of the second suppression hearing. Relitigation of the
39 motion shall be heard by the same judge who granted the
40 motion at the first hearing if the judge is available.

(q) Neither the investigating officer nor the investigator for the defendant shall be excluded from the hearing on a motion under this section.

(r) The amendments to this section enacted in the 1997 portion of the 1997-98 Regular Session of the Legislature shall apply to all criminal proceedings conducted on or after January 1, 1998.

~~SEC. 3. Section 21806 of the Vehicle Code is amended to read:~~

~~21806. Upon the immediate approach of an authorized emergency vehicle which is sounding a siren and which has at least one lighted lamp exhibiting a red or blue light that is visible, under normal atmospheric conditions, from a distance of 1,000 feet to the front of the vehicle, the surrounding traffic shall, except as otherwise directed by a peace officer, do the following:~~

~~(a) (1) Except as required under paragraph (2), the driver of every other vehicle shall yield the right-of-way and shall immediately drive to the right-hand edge or curb of the highway, clear of any intersection, and thereupon shall stop and remain stopped until the authorized emergency vehicle has passed.~~

~~(2) A person driving a vehicle in an exclusive or preferential use lane shall exit that lane immediately upon determining that the exit can be accomplished with reasonable safety.~~

~~(b) The operator of every street car shall immediately stop the street car, clear of any intersection, and remain stopped until the authorized emergency vehicle has passed.~~

~~(c) All pedestrians upon the highway shall proceed to the nearest curb or place of safety and remain there until the authorized emergency vehicle has passed.~~

~~SEC. 4.—~~

~~SEC. 3. Section 23612 of the Vehicle Code is amended to read:~~

~~23612. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her~~

1 blood, if lawfully arrested for any offense allegedly
2 committed in violation of Section 23140, 23152, or 23153.
3 If a blood or breath test, or both, are unavailable, then
4 paragraph (2) of subdivision (d) applies.

5 (B) Any person who drives a motor vehicle is deemed
6 to have given his or her consent to chemical testing of his
7 or her blood or urine for the purpose of determining the
8 drug content of his or her blood, if lawfully arrested for
9 any offense allegedly committed in violation of Section
10 23140, 23152, or 23153.

11 (C) The testing shall be incidental to a lawful arrest
12 and administered at the direction of a peace officer
13 having reasonable cause to believe the person was driving
14 a motor vehicle in violation of Section 23140, 23152, or
15 23153.

16 (D) The person shall be told that his or her failure to
17 submit to, or the failure to complete, the required
18 chemical testing will result in a fine, mandatory
19 imprisonment if the person is convicted of a violation of
20 Section 23152 or 23153, and (i) the suspension of the
21 person's privilege to operate a motor vehicle for a period
22 of one year, (ii) the revocation of the person's privilege
23 to operate a motor vehicle for a period of two years if the
24 refusal occurs within seven years of a separate violation
25 of Section 23103 as specified in Section 23103.5, or of
26 Section 23140, 23152, or 23153, or of Section 191.5 or
27 paragraph (3) of subdivision (c) of Section 192 of the
28 Penal Code that resulted in a conviction, or if the person's
29 privilege to operate a motor vehicle has been suspended
30 or revoked pursuant to Section 13353, 13353.1, or 13353.2
31 for an offense that occurred on a separate occasion, or
32 (iii) the revocation of the person's privilege to operate a
33 motor vehicle for a period of three years if the refusal
34 occurs within seven years of two or more separate
35 violations of Section 23103 as specified in Section 23103.5,
36 or of Section 23140, 23152, or 23153, or of Section 191.5 or
37 paragraph (3) of subdivision (c) of Section 192 of the
38 Penal Code, or any combination thereof, that resulted in
39 convictions, or if the person's privilege to operate a motor
40 vehicle has been suspended or revoked two or more times

1 pursuant to Section 13353, 13353.1, or 13353.2 for offenses
2 that occurred on separate occasions, or if there is any
3 combination of those convictions or administrative
4 suspensions or revocations.

5 (2) (A) If the person is lawfully arrested for driving
6 under the influence of an alcoholic beverage, the person
7 has the choice of whether the test shall be of his or her
8 blood or breath and the officer shall advise the person that
9 he or she has that choice. If the person arrested either is
10 incapable, or states that he or she is incapable, of
11 completing the chosen test, the person shall submit to the
12 remaining test. If a blood or breath test, or both, are
13 unavailable, then paragraph (2) of subdivision (d)
14 applies.

15 (B) If the person is lawfully arrested for driving under
16 the influence of any drug or the combined influence of an
17 alcoholic beverage and any drug, the person has the
18 choice of whether the test shall be of his or her blood,
19 breath, or urine, and the officer shall advise the person
20 that he or she has that choice.

21 (C) A person who chooses to submit to a breath test
22 may also be requested to submit to a blood or urine test
23 if the officer has reasonable cause to believe that the
24 person was driving under the influence of any drug or the
25 combined influence of an alcoholic beverage and any
26 drug and if the officer has a clear indication that a blood
27 or urine test will reveal evidence of the person being
28 under the influence. The officer shall state in his or her
29 report the facts upon which that belief and that clear
30 indication are based. The person has the choice of
31 submitting to and completing a blood or urine test, and
32 the officer shall advise the person that he or she is
33 required to submit to an additional test and that he or she
34 may choose a test of either blood or urine. If the person
35 arrested either is incapable, or states that he or she is
36 incapable, of completing either chosen test, the person
37 shall submit to and complete the other remaining test.

38 (3) If the person is lawfully arrested for an offense
39 allegedly committed in violation of Section 23140, 23152,
40 or 23153, and, because of the need for medical treatment,

1 the person is first transported to a medical facility where
2 it is not feasible to administer a particular test of, or to
3 obtain a particular sample of, the person's blood, breath,
4 or urine, the person has the choice of those tests that are
5 available at the facility to which that person has been
6 transported. In that case, the officer shall advise the
7 person of those tests that are available at the medical
8 facility and that the person's choice is limited to those
9 tests that are available.

10 (4) The officer shall also advise the person that he or
11 she does not have the right to have an attorney present
12 before stating whether he or she will submit to a test or
13 tests, before deciding which test or tests to take, or during
14 administration of the test or tests chosen, and that, in the
15 event of refusal to submit to a test or tests, the refusal may
16 be used against him or her in a court of law.

17 (5) Any person who is unconscious or otherwise in a
18 condition rendering him or her incapable of refusal is
19 deemed not to have withdrawn his or her consent and a
20 test or tests may be administered whether or not the
21 person is told that his or her failure to submit to, or the
22 noncompletion of, the test or tests will result in the
23 suspension or revocation of his or her privilege to operate
24 a motor vehicle. Any person who is dead is deemed not
25 to have withdrawn his or her consent and a test or tests
26 may be administered at the direction of a peace officer.

27 (b) Any person who is afflicted with hemophilia is
28 exempt from the blood test required by this section.

29 (c) Any person who is afflicted with a heart condition
30 and is using an anticoagulant under the direction of a
31 licensed physician and surgeon is exempt from the blood
32 test required by this section.

33 (d) (1) A person lawfully arrested for any offense
34 allegedly committed while the person was driving a
35 motor vehicle in violation of Section 23140, 23152, or 23153
36 may request the arresting officer to have a chemical test
37 made of the arrested person's blood or breath for the
38 purpose of determining the alcoholic content of that
39 person's blood, and, if so requested, the arresting officer
40 shall have the test performed.

1 (2) If a blood or breath test is not available under
2 subparagraph (A) of paragraph (1) of subdivision (a), or
3 under subparagraph (A) of paragraph (2) of subdivision
4 (a), or under paragraph (1) of this subdivision, the person
5 shall submit to the remaining test in order to determine
6 the percent, by weight, of alcohol in the person's blood.
7 If both the blood and breath tests are unavailable, the
8 person shall be deemed to have given his or her consent
9 to chemical testing of his or her urine and shall submit to
10 a urine test.

11 (e) If the person, who has been arrested for a violation
12 of Section 23140, 23152, or 23153, refuses or fails to
13 complete a chemical test or tests, or requests that a blood
14 or urine test be taken, the peace officer, acting on behalf
15 of the department, shall serve the notice of the order of
16 suspension or revocation of the person's privilege to
17 operate a motor vehicle personally on the arrested
18 person. The notice shall be on a form provided by the
19 department.

20 (f) If the peace officer serves the notice of the order
21 of suspension or revocation of the person's privilege to
22 operate a motor vehicle, the peace officer shall take
23 possession of any driver's license issued by this state which
24 is held by the person. The temporary driver's license shall
25 be an endorsement on the notice of the order of
26 suspension and shall be valid for 30 days from the date of
27 arrest.

28 (g) (1) The peace officer shall immediately forward
29 a copy of the completed notice of suspension or
30 revocation form and any driver's license taken into
31 possession under subdivision (f), with the report required
32 by Section 13380, to the department. If the person
33 submitted to a blood or urine test, the peace officer shall
34 forward the results immediately to the appropriate
35 forensic laboratory. The forensic laboratory shall forward
36 the results of the chemical tests to the department within
37 15 calendar days of the date of the arrest.

38 (2) (A) Notwithstanding any other provision of law,
39 any document containing data prepared and maintained
40 in the governmental forensic laboratory computerized

1 data base system that is electronically transmitted or
2 retrieved through public or private computer networks
3 to or by the department is the best available evidence of
4 the chemical test results in all administrative proceedings
5 conducted by the department. In order to be admissible
6 as evidence in administrative proceedings, a document
7 described in this subparagraph shall bear a certification
8 by the employee of the department who retrieved the
9 document certifying that the information was received or
10 retrieved directly from the computerized data base
11 system of a governmental forensic laboratory and that the
12 document accurately reflects the data received or
13 retrieved.

14 (B) Notwithstanding any other provision of law, the
15 failure of an employee of the department to certify under
16 subparagraph (A) is not a public offense.

17 (h) A preliminary alcohol screening test that indicates
18 the presence or concentration of alcohol based on a
19 breath sample in order to establish reasonable cause to
20 believe the person was driving a vehicle in violation of
21 Section 23140, 23152, or 23153 is a field sobriety test and
22 may be used by an officer as a further investigative tool.

23 (i) If the officer decides to use a preliminary alcohol
24 screening test, the officer shall advise the person that he
25 or she is requesting that person to take a preliminary
26 alcohol screening test to assist the officer in determining
27 if that person is under the influence of alcohol or drugs,
28 or a combination of alcohol and drugs. The person's
29 obligation to submit to a blood, breath, or urine test, as
30 required by this section, for the purpose of determining
31 the alcohol or drug content of that person's blood, is not
32 satisfied by the person submitting to a preliminary
33 alcohol screening test. The officer shall advise the person
34 of that fact and of the person's right to refuse to take the
35 preliminary alcohol screening test.

36 ~~SEC. 5.—~~

37 *SEC. 4.* Any section of any act enacted by the
38 Legislature during the 2000 calendar year that takes
39 effect on or before January 1, 2001, and that amends,
40 amends and renumbers, adds, repeals and adds, or repeals

1 any one or more of the sections affected by this act shall
2 prevail over this act, whether that act is enacted prior to,
3 or subsequent to, the enactment of this act. The repeal,
4 or repeal and addition, of any article, chapter, part, title,
5 or division of any code by this act shall not become
6 operative if any section of any other act that is enacted by
7 the Legislature during the 2000 calendar year and takes
8 effect on or before January 1, 2001, amends, amends and
9 rennumbers, adds, repeals and adds, or repeals any section
10 contained in that article, chapter, part, title, or division.

